

The meeting opened at 7:10 p.m. Present were: Stephen Anderson (Chair), David Brown, Nancy Jeton, and Philip Boness. Rachel Baime arrived at 7:16 p.m.

**Petition No.: 3952**

**Premises affected: 30 Shattuck Rd**

**Petitioner: Hanover**

**Members: Anderson (Chair); Baime (Acting Clerk); Boness (Member); Brown, Jeton. Also present was Attorney Carol McGravey from the office of Town Counsel.**

Anderson brought to the Board's attention additional documents, asking if they have been allowed into the record:

1. Edward B., Reef Real Estate, submitted a letter regarding No. 1, 2, & 6, Tech Dr., owner opposed
2. Department of Housing and Community Development (SHI), e-mails to J. Barrett, Planning, and Barbara Burke regarding which projects were approved since Andover was under 10% (October, 2007).
3. Northfield Commons, Taylor Cove, Miscellaneous individual AHP projects (ACT)
4. Andover's Long Term Planning Interests from Tom Urbelis Received 9/3.

Anderson asked if there were objections to the ZBA receiving written information into the record. Carmine Tomas had no objection and added additional letters from other Hanover projects and from Foxboro (via e-mail). Attorney Mussman opposed receiving these into the record due to the hearing being closed, stating it was not appropriate. Anderson said he would allow it.

Carol McGravey summarized Tom Urbelis' documents regarding Andover's Long Term Planning Interests drafted as part of a potential approval. The question is whether the proposed housing would undermine the town regarding interests as laid out in the 2012 Master Plan. There are no major objections from town planners and there are already two comp permits in ID. The Middleboro case is different; sewer system upgrades are not part of long term planning. It was questioned whether HAC would accept the 2012 Master Plan as a definitive plan and if there would be an adverse impact on abutters' business and real estate values without concern under 40B. Anderson asked if Town Counsel recommends one way or another, approval or denial. McGravey stated she is not suggesting which way the Board should vote. Anderson asked opponent's counsel for a response. Mussman said the context of McGravey's memorandum was unclear. He stated the issue is whether the project is right for this location, adding that the industrial zone is 50 years old and allowed uses are intense (incompatible with residential use). The property location is in the center of the district and the only undeveloped lot in an industrial corridor where all other users are industrial. He stated the town designated the site as a priority development under 43D regarding noise, light, and fumes generated by allowed uses. He cited the 28 Clay Street v. Middleborough ZBA case where there was a strong basis for denial, adding that this could be upheld by HAC.

Kevin O'Flaherty, attorney, submitted a memorandum detailing his comments, laying out the law and the facts of this case. Regarding the planning issue raised by abutters, (Master Plan of 1992, 2012; Community Development Plan of 2004) he states that Tom Urbelis's memorandum applies to all three. O'Flaherty said the ZBA did not deny it. He stated there were threshold tests to see if the planning documents can be used to deny the comp permit, but it did not use them due to technical deficiencies. He stated the plans are bona fide. He said the proposed project is not inconsistent with the Master Plans and Community Development Plan, pointing out that Tom Urbelis even states this in his memo. He said a mixed use approach is consistent with Master Plans from the town and compatible with multi-family use. He said office and R&D low industrial uses characterize this area as non-offensive industry. The 1992 Plan promotes mixed uses and the 2004 Plan indoor manufacturing. The Zoning Board prohibits effects discernible at the lot line and Town Counsel's letter supports applicant and the law. Barbara Huggins said this was a misapplication of the Town Counsel's (and applicant's) interpretation regarding real estate value. (Standerwick case). She said actual businesses are

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threatened and other cases have supported this position. Marc Fereau of Carruth Capital said it is not an office park. He said Casco Crossing is an example of the ZBA approval when life and safety are not threatened. He said no one spoke of devaluation of property values and there was no concern. He said it was a 24-hour industrial operation. Anderson reviewed the process of drafting approvals and denials. The September 4, 2012 drafts submitted by Judi Barrett late this afternoon will be discussed with the Board and an overview of the appeal process with HAC's record of sustaining/and upholding decisions. He asked the Board if a focus on the merits of the case is the right thing to do. David Brown said the project has progressed and improved a lot, but the location is of concern and the impact of the project on the business park in an industrial zone, a vibrant area. He said it is the wrong project in the wrong location. While it is good for affordable housing, it is bad for a commercial/industrial base. Rachel Baime agreed with Brown, saying there is a better use for the lot: business/industrial. Philip Boness expressed similar feelings as Brown, saying it is not the right fit. He said Tom Urbelis's memorandum sheds a different light on it, but he is undecided. He said a large residential use and the density in an industrial/commercial use would not be good based on what he's seen on other projects. Nancy Jeton is still not in favor of the project. She said the Board has credible reasons to deny. Anderson agreed with Jeton, saying Tom's memo is inaccurate and agreed with Rachel Baime in wanting to decide based on what is right for the 9.3% of Andover's SHI, which is better than other areas. He considered the regional need for employment as important and considered abutters' comments that they wouldn't have opened a business there if a residential project was there at the time they chose the location. He pointed out that the town needs to provide jobs and housing. He said it is an approvable project with effects that can be mitigated, but non-conformities for abutters cannot be papered over; they are "infectious violations" of the Zoning By-Law, which is a serious issue. He said the setting is different than Casco Crossing, a transition project, adding that this is in the heart of an industrial district, and drives a wedge into and bifurcates the district. He said the By-Law anticipated industrial abutters with similar uses within the district, not residences. He added that buffers are set up to protect existing residential abutters.

Anderson stated that residential and vehicular traffic is in danger among industrial users and is a recipe for inconsistency between residential and industrial uses. He is concerned with approving this project in an industrial district and forever losing business/jobs on this lot, plus land lock residential use surrounded by industry. David Brown said HAC is not an impartial court; that their agenda is to create affordable housing. He questioned how the ZBA could protect town interests.

Anderson said the risk of approval with condos and appeal is that neighbors have a better chance in court than the ZBA at HAC. He stated that if denied, they can get (the decision) overturned on appeal, including approval decisions. Anderson added that HAC's precedent is approval with condos. The SJC favors affordable house more often than not. There is no public hearing, just giving each side three minutes to speak.

Brown made a motion to deny the comp permit for the project in accordance with draft denial with such edits that may be made tonight. Jeton seconded the motion. The Board discussed the highlighted sections of the draft decision. Anderson stated that Taylor Cove and Northfield Commons are not yet in the SHI, but reflect the town's efforts to create affordable housing. The Board took time to review the draft denial and make revisions. Brown made a motion to amend the decision as discussed. Jeton seconded the motion. The Board voted (5-0) to amend the draft decision. Anderson made a motion to deny the project with amendments as discussed tonight. Brown seconded the motion. The Board voted (5-0) to deny the project.

Anderson directed Judi Barrett to save a redlined and clean version of the decision to be distributed to the Board by the close of business on September 6, 2012. Board is to send any edits (nothing substantive) to Barbara Burke, Administrative Secretary, who will send them on to Judi.

Anderson authorized Judi to send a draft with revisions to the entire Board if she sends it after Barbara Burke leaves work for the day. Anderson wants the decision filed with the Town Clerk by Friday.

Rachel Baime made a motion to adjourn the meeting. Jeton seconded the motion. The Board voted (5-0) to adjourn at 9:37 pm.